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Attorneys for Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

**In re:**

**USA Commercial Mortgage Company  
06-10725 – Lead Case**

**USA Capital Realty Advisors, LLC  
06-10726**

**USA Capital Diversified Trust Deed Fund,  
LLC  
06-10728**

**USA Capital First Trust Deed Fund, LLC  
06-10728**

**USA Securities, LLC  
06-10729**

**Debtors.**

Jointly Administered  
Chapter 11 Cases  
Judge Linda B. Riegler Presiding

**RESPONSE TO MOTION OF USA  
INVESTMENT PARTNERS, LLC AND  
JOSEPH D. MILANOWSKI FOR THE  
ENDORSEMENT OF A PROTECTIVE  
ORDER**

Date: January 3, 2007  
Time: 9:30 a.m.

**Affecting:**

☒ All Cases

**or Only:**

- ☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

The Official Unsecured Creditors' Committee for USA Commercial Mortgage Company generally joins in the Debtors' Response to Motion of USA Investment Partners, LLC and Joseph D. Milanowski for the Endorsement of a Protective Order. We write separately to make three points.

1 First, Debtors should long ago have imaged all of the books and records that may  
2 be relevant to litigation with Joseph D. Milanowski, USA Investment Partners, LLC and  
3 other obvious targets. Having the books and records remain in paper form in offices that  
4 will soon be in transition puts evidence upon which creditors' potential recoveries depend  
5 at great risk. At a minimum, no documents should be removed from the USA Commercial  
6 Mortgage Company offices until they have been imaged and the electronic files stored in a  
7 way that can be accessible to all parties. These matters will shortly be in litigation with  
8 parties located across the country. Having documents maintained in an electronic form  
9 will make the availability of documents for discovery, settlement, and information  
10 gathering vastly less expensive. It is also important so that the "chain of custody" of the  
11 documents can be proved. Once the documents are transferred out of the Debtors'  
12 possession, that proof will be much more difficult to establish. The Unsecured Committee  
13 has repeatedly urged that this imaging task be accomplished, and requests now that any  
14 production/protective order include a requirement that documents be imaged before being  
15 released from the Debtors' possession.

16 Second, the Liquidating Trust provided for under the joint Plan of Reorganization  
17 will be the successor to USA Commercial Mortgage Company, and its rights as the  
18 successor should be explicitly denominated in the production/protective order. The  
19 Liquidating Trustee should not have to renegotiate the protective order with Milanowski or  
20 USA Investment Partners, LLC or their surrogates.

21 Third, no documents should be released to Milanowski, USA Investment Partners,  
22 LLC or their affiliates without sufficient advance notice to the Unsecured Committee's  
23 counsel to enable it to confirm the prior imaging, and take action if necessary to protect  
24 valuable evidence. This requirement should be stated explicitly in the order, as the  
25 documents at issue are too important to the unsecured creditors' recovery to risk  
26 miscommunication problems.



1 Dated December 12, 2006.

2 **LEWIS AND ROCA LLP**

3  
4 By /s/ RC (#006593)

5 Susan M. Freeman, AZ 4199 (pro hac vice)

6 Rob Charles, NV 6593

7 *Attorneys for Official Unsecured Creditors' Committee*